

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2228

Introduced by Assembly Member Cook
(Coauthor: Assembly Member Berryhill)

February 20, 2008

An act to amend Section ~~187~~ 1335 of the Penal Code, relating to ~~murder~~ criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2228, as amended, Cook. ~~Murder. Criminal procedure: capital cases; witnesses; conditional examinations.~~

Existing law provides for the conditional examination of a witness by the defendant in all cases and by the people in cases where the punishment may be other than death under specified conditions. Existing law further provides that when the defendant has been charged with a serious felony, as defined, the people may have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy.

This bill would, instead, allow for the conditional examination of a witness by the people and the defendant in all cases, including those where the punishment may be death under the specified conditions.

~~Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought, except when the death of a fetus is as a result of certain specified acts.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1335 of the Penal Code is amended to
2 read:

3 1335. ~~(a) When a defendant has been charged with a public~~
4 ~~offense triable in any court, he or she in all cases, the defendant~~
5 ~~and the people in cases other than those for which the punishment~~
6 ~~may be death; may, if the defendant has been fully informed of~~
7 ~~his or her right to counsel as provided by law, have witnesses~~
8 ~~examined conditionally in his or her or their behalf, as prescribed~~
9 ~~in this chapter.~~

10 ~~(b) When a defendant has been charged with a serious felony,~~
11 ~~the people or the defendant may, if the defendant has been fully~~
12 ~~informed of his or her right to counsel as provided by law, have a~~
13 ~~witness examined conditionally as prescribed in this chapter, if~~
14 ~~there is evidence that the life of the witness is in jeopardy.~~

15 ~~(c) As used in this section, “serious felony” means any of the~~
16 ~~felonies listed in subdivision (c) of Section 1192.7 or any violation~~
17 ~~of Section 11351, 11352, 11378, or 11379 of the Health and Safety~~
18 ~~Code.~~

19 SECTION 1. ~~Section 187 of the Penal Code is amended to~~
20 ~~read:~~

21 ~~187. (a) Murder is the unlawful killing of a human being, or~~
22 ~~a fetus, with malice aforethought.~~

23 ~~(b) This section shall not apply to any person who commits an~~
24 ~~act that results in the death of a fetus if any of the following apply:~~

25 ~~(1) The act complied with the Therapeutic Abortion Act, Article~~
26 ~~2 (commencing with Section 123400) of Chapter 2 of Part 2 of~~
27 ~~Division 106 of the Health and Safety Code.~~

28 ~~(2) The act was committed by a holder of a physician’s and~~
29 ~~surgeon’s certificate, as defined in the Business and Professions~~
30 ~~Code, in a case where, to a medical certainty, the result of~~
31 ~~childbirth would be the death of the mother of the fetus or where~~
32 ~~her death from childbirth, although not medically certain, would~~
33 ~~be substantially certain or more likely than not.~~

34 ~~(3) The act was solicited, aided, abetted, or consented to by the~~
35 ~~mother of the fetus.~~

- 1 ~~(e) Subdivision (b) shall not be construed to prohibit the~~
- 2 ~~prosecution of any person under any other provision of law.~~

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